IN THE

Supreme Court of the United States

76-930

October Term, 1976
No. A-456

DANIEL J. EVANS, Governor of the State of Washington, *et al.*,

Appellants,

vs.

ATLANTIC RICHFIELD, *et al.*,

Appellees.

Brief of Amicus Curiae State of California (Joined by the States of Alaska, Pennsylvania, Wisconsin and Missouri) in Support of Appellants' Jurisdictional Statement.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Interest of Amici Curiae States.

The State of California and the named states joining in this brief are vitally concerned with the District Court's ruling in this case. At stake is the historic police power authority of coastal and Great Lakes states to adopt and implement reasonable regulations for protecting coastal waters and marine environments from supertanker oil pollution. With the advent of Alaskan oil, it is now clear that the Pacific coastal states, particularly California, may assume the burden of receiving and passing inland through their coastal regions a significant portion of the nation's oil needs. In the next few years, it is expected that about 1 million

barrels *per day* of Alaskan oil will be entering California by tanker. Not only the higher volume of crude oil shipped but also the increasing size of supertankers presents a greater potential for catastrophic oil spills that will cause serious damage to California's coastal resources.

The other named states[1] joining in this brief are equally concerned with California that increasing volumes of crude oil transported by large tankers may have serious pollution consequences for their shoreline and coastal resources.

The world's tanker fleet is now dominated by the big ships. These supertankers will carry most of the world's oil for years to come. There is new evidence that enlarging the size of tankers considerably increases the risks of accidental oil spills.[2]

Faced with the reality that supertankers will be carrying the bulk of oil transported by sea, faced with the reality that Congress has taken some action to regulate oil tanker pollution (but perhaps not as much as coastal states would like to see), and faced with the reality that some accommodation must be sought between meeting the nation's oil needs and protecting coastal resources from pollution, California and the named states joining in this brief have a strong interest in being free to develop and implement innovative but reasonable tanker regulations consistent both with local needs and national interests.

Amici curiae states have no interest or desire to compete with the U.S. Coast Guard's regulations over

[1]The State of Missouri, joining in this brief, is not a coastal or Great Lakes state, but is concerned about the adverse implications of the District Court's decision on federal-state relations.

[2]"Large Rewards Losing Appeal Against the Big Risk" in *Fairplay*, March 11, 1976 [leading international shipping weekly].

vessel safety design and traffic control. However, where Congress has legislated requirements for tanker safety and for protecting coastal marine environments in a way that plainly permits cooperative and complementary regulation by affected states, such states have a compelling interest in protecting and implementing their historic police powers in a way that does not conflict with federal law and regulations in this area.

The Questions Are Substantial.

The Ports and Waterways Safety Act Does Not Preempt the States From Regulating Oil Tanker Operations and Traffic Routes.

The District Court below has held that the PWSA has preempted the field of regulating oil tanker operations, traffic routes, pilotage and safety design specifications. The effect of this ruling is to nullify or preclude a wide range of existing or potential state laws regulating oil tanker operations and traffic routes. The broad wording of the District Court's ruling appears to preclude state regulation of oil tanker operations inside harbors and inland waterways. The District Court's ruling may also cast doubt on the ability of states to regulate a different type of oil tanker pollution—hydrocarbon emissions generated from oil tanker unloading operations, ballasting and purging, which are significant sources of air pollution.

This broad preemption holding conflicts with basic principles of federal preemption and the application of these principles to the area of state regulation of coastal and shoreline resources and environmental quality. This Court has consistently held that the States may supplement federal regulations in a limited field where the state has a valid interest to protect and

where there is no actual conflict between the state and federal laws. *Huron Portland Cement Co. v. Detroit,* 362 U.S. 440 (1960); *Askew v. American Waterway Operators,* 411 U.S. 325 (1973); *DeCanas v. Bica,* 424 U.S. 351 (1976). Significantly, the District Court's holding indicates that the PWSA preempts the states from regulating tanker operations and traffic routes even where the Coast Guard has not acted. *Atlantic Richfield v. Evans,* ..... F.Supp. ....., Slip Opinion page 3 (1976). Related to this, the District Court's decision below precludes historic state police power authority to restrict oil tankers from operating in environmentally sensitive bays, sounds and estuaries. The District Court strains to reason that PWSA, 33 U.S.C. § 1221(3)(iv) gives the Coast Guard this exclusive control based on enabling authority to restrict tankers "under adverse or hazardous conditions." Hence, states seeking to restrict tanker operations on broader police power grounds that may extend beyond "adverse or hazardous conditions", cannot do so according to the District Court, even if the Coast Guard never actually regulates in that specific area. Clearly, this is wrong.

Washington's Tanker Law Does Not Violate the Commerce Clause.

Another substantial question is whether Washington's Tanker Law violates the Commerce Clause. The District Court did not decide this question although it was extensively briefed by the parties below. Appellee Atlantic Richfield Company argues that Section (3)(2) of Washington's Tanker Law violates the Commerce Clause because all oil tankers over 125,000 dwt are excluded from operating in Puget Sound. But the ban

on tankers over 125,000 dwt does not apply to remaining coastal waters in Washington state; several sites for supertanker ports exist in these coastal waters outside Puget Sound. Certainly a state has police power authority, comparable to its zoning power, to exclude supertankers from selected environmentally sensitive bays, sounds and harbors without violating the Commerce Clause.

Conclusion.

It is important for this Court to take jurisdiction of this case since the decision below threatens state regulation of matters legitimately within its police power, threatens existing and contemplated state laws on oil tanker operations in coastal areas not in conflict with federal law, and threatens the well-settled balance of state-federal regulations in this area. The sweeping preemption ruling of the District Court below would oust the coastal states from their historically recognized police powers over coastal and harbor water uses. The District Court's ruling, unfortunately sparse in analysis, goes too far.

Dated: January 6, 1977.

Respectfully submitted,

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